

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

GRAMERCY ADVISORS, LLC,)
)
Plaintiff,)
)
v.)
)
CARLETON A. JONES, III and	Case No. 07-CV-2809
JOHN A. JONES,)
	Judge McKenna
Defendants,)
	Magistrate Judge Peck
)
)

MOTION TO DISMISS, STAY OR TRANSFER

Defendants, John A. Jones and Carleton A. Jones, III [“Messrs. Jones”], move the Court to dismiss or stay this case. In the alternative, Messrs. Jones move the Court to transfer this case to the Middle District of Tennessee pursuant to 28 U.S.C. §1404(a).

1. This case involves the same issues as *Jones v. BDO Seidman, LLP and Gramercy Advisors, LLC* which was earlier filed in the United States District Court for the Middle District of Tennessee (Docket #3:06-CV-1115) [“the Tennessee Case”].
2. The Tennessee Case was filed on November 20, 2006.
3. On March 27, 2007, Messrs. Jones filed an Amended Complaint which *inter alia* added Gramercy as a Defendant in the Tennessee Case.
4. On March 29, 2007, Gramercy was served with process and a copy of the Amended Complaint.
5. On April 9, 2007, Gramercy filed this case against Messrs. Jones.

6. This case involves the same factual and legal issues as the earlier-filed Tennessee Case.

7. This later-filed action should be dismissed, stayed, or transferred to the Middle District of Tennessee. This is for each of the following reasons:

- (1) The claims which Gramercy has asserted in this Court are compulsory counterclaims which must be pursued in the earlier-filed Tennessee Case or be forever barred.**
- (2) Pursuant to the well-settled First-Filed Rule this Court should dismiss or stay this action pending the outcome of the Tennessee Case.**
- (3) In the interest of justice, and for other reasons, this case should be transferred to the Middle District of Tennessee pursuant to 28 U.S.C. §1404(a).**

In further support of their Motion, Messrs. Jones have submitted the following:

- Memorandum of Law.
- Declaration of Winston S. Evans, and Exhibits thereto.

Respectfully submitted,

s/ Winston S. Evans
Winston S. Evans (#6281)
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION TO DISMISS, STAY OR TRANSFER** has been served via **Electronic Transmission** upon:

Michael Edward Petrella, Esq.
O'Shea Partners, LLP
90 Park Avenue, 20th Floor
New York, NY 10016

Richard D. Meadow, Esq.
The Lanier Law Firm, PLLC
126 East 56th Street, 6th Floor
New York, NY 10022

via **Electronic Transmission and Federal Express** upon:

Hon. Lawrence M. McKenna, District Judge
United States Courthouse
500 Pearl St., Room 1640
New York, NY 10007

this 19th day of June, 2007.

s/ Winston S. Evans

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